

MINUTES OF THE 179th MEETING OF THE
WATER MANAGEMENT BOARD
FLOYD MATTHEW TRAINING CENTER
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA

December 6, 2012

CALL TO ORDER: Chairman Rodney Freeman called the meeting to order at 10:00 a.m. CDT. A quorum was present.

The following were present at the meeting:

Board Members: Rodney Freeman, Everett Hoyt, Tim Bjork, Leo Holzbauer, Chad Comes, and Peggy Dixon. Jim Hutmacher was absent.

Department of Environment and Natural Resources (DENR): Garland Erbele, Eric Gronlund, Karen Schlaak, Ken Buhler, Tim Schaal, Adam Mathiowetz, Joe Stonesifer, Nick Wuebben, Genny McMath, Ron Duvall, Mike DeFea, and Lynn Beck, Water Rights Program; Matt Hicks, Ground Water Quality Program.

Attorney General's Office: Diane Best and Jeff Hallem.

Legislative Oversight Committee: Senator Jim Hundstad, Bath, SD and Senator Tom Hansen, Huron, SD.

Others: See attached attendance sheets.

APPROVAL OF MINUTES FROM OCTOBER 3, 2012, MEETING: Motion by Bjork, seconded by Comes, to approve the minutes from the October 3, 2012, Water Management Board meeting. Motion carried.

MARCH MEETING LOCATION: The next regular Water Management meeting is scheduled for March 6-7, 2013, in Pierre.

Garland Erbele asked that the board schedule a special meeting to hear applications from Powertech (USA), Inc. The hearing was originally scheduled for December 5, 2012, but a request was received that the hearing be auto delayed.

Mr. Erbele noted that the hearing could take five days and he recommended the hearing be held in either Hot Springs or Rapid City. Staff recommended that the hearing be scheduled for the week of March 18, 2013.

The board members were in agreement with holding the hearing the week of March 18.

INTRODUCTION OF NEW WATER RIGHTS STAFF: Mr. Erbele introduced new staff members Nick Wuebben and Joe Stonesifer.

STATUS AND REVIEW OF WATER RIGHTS LITIGATION: Jeff Hallem reported that there was no Water Rights litigation to report. The only issue pending that is related is an issue dealing with the Corps of Engineers. The US Supreme Court issued a ruling that a temporary taking could be actionable against the United States, but that is a broader issue than just water.

ADMINISTER OATH TO DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) STAFF: Chairman Freeman administered the oath to DENR staff who intended to testify during the meeting.

CANCELLATION OF FUTURE USE PERMIT NO. 1688B-3, SOUTH CENTRAL WATER DEVELOPMENT DISTRICT: Leo Holzbauer said he intended to abstain from participating in this matter.

Eric Gronlund reported that the board packet included a notice scheduling today's hearing and a November 13, 2012, letter from the water development district.

The future use permit reserves 297,400 acre-feet of water from the Missouri River. The permit originated with Fort Randall and the Lower James Conservancy Subdistrict, dating back to 1969 for irrigation, municipal, stock watering, fish culture, fire protection, industrial, and public recreation.

Mr. Gronlund noted that this matter came before the Water Management Board in October, 2012. There was an issue of where the future use permit had been split with the 297,400 acre-feet being retained by the South Central Water Development District and the other portion, 96,000 acre-feet, transferred to the Lake Andes Irrigation District. This cancellation was deferred because a representative of the water development district had some concerns about whether the cancellation would impact the Lake Andes-Wagner Irrigation District's future use permit. There was also a discussion on the Corps of Engineers surplus water charge proposal. The representative requested that he be given the opportunity to bring this matter back to his board of directors for reconsideration. There is a November 13, 2012, letter which reaffirms their decision not to retain the future use permit.

The chief engineer recommended cancellation of Future Use Permit No. 1688B-3, South Central Water Development District.

Leo Holzbauer stated that even though the South Central Water Development District has requested cancellation of the future use permit, the Lake Andes-Wagner Irrigation District would request that board defer its decision on the cancellation until next October. Mr. Holzbauer said the reason the water development district wants to cancel the future use permit is because of the cost of the future use permit. The cost of the future use permit is approximately \$24,000. Mr. Holzbauer said he realizes the cost is legislatively set, but he is afraid the board will regret cancelling the future use permit and losing that priority date.

Mr. Holzbauer asked that the cancellation be deferred until October in order to give the irrigation district time this summer to get the people in the South Central Water Development District educated.

Mr. Hoyt asked Mr. Holzbauer if the board were to defer action on this until October, to whom would the board look to for payment of the fees in the meantime.

Mr. Holzbauer said in the meantime there would be no payment until October. There is no money available for payment. The Lake Andes-Wagner Irrigation District does not have taxing authority and South Central Water Development District had indicated that they will not pay the fee. Mr. Holzbauer said he realizes that South Central Water Development District is on a tight budget and other projects need funding. But the boundaries of the district are being redrawn and hopefully the irrigation district can make a commitment by October. It will take two years to get taxing authority, but at least if there were a commitment for that, the district could borrow the money to pay the fee.

Mr. Hoyt said personally, he would like to accommodate Mr. Holzbauer's request, but he does not know what other issues that raises. Mr. Hoyt asked Mr. Gronlund to respond to the fee situation and any other questions that were raised.

Mr. Gronlund said he agrees with Mr. Holzbauer that the issue here is about the fee. In 2000, the legislature increased fees not only for water permit applications approximately three fold, but that also carried over to future use permits. When a future use permit is reviewed, if it is allowed to remain in effect, the applicant is responsible paying 10 percent of what the normal filing fee would be for a new permit. So for this amount of water to remain in reserve, it would be just shy of \$25,000. Prior to 1999, the fee was approximately \$8,000 to \$8,500 range.

Mr. Gronlund said he agrees that the fact the fees went up dramatically has some bearing on the district, but from the staff's aspect, that was a legislative decision, and the chief engineer recommended cancellation because the future use permit holder has stated on two occasions that they do not wish to retain the future use permit.

Chairman Freeman asked Jeff Hallem to comment.

Mr. Hallem stated that the applicant is the only party that has standing regarding the cancellation. That applicant has said they want the future use permit cancelled so from a legal standpoint, even though Lake Andes-Wagner Irrigation District may be interested, but they are not a party to the future use permit cancellation.

Regarding the fees, Mr. Hallem said the applicant has said they do not want the future use permit to remain in effect so the board cannot force the fee on them. The statutes require payment of the fee if the future use permit remains in effect.

If the board was looking at a licensure and they were contesting it, the law is clear that until the licensing matter completed, the license continues, but in this instance the permit holder is asking that it be cancelled, and Mr. Hallem said he does not know that the board can force them to keep

the permit in effect. Mr. Hallem said he does not have the answer as to what the legal effects are. He is not aware of any cases that dealt with the reverse of that where forcing a license on someone that does not want to continue. You could not enforce that in court because you cannot force the injunctive affirmative relief on somebody that wasn't there for that type of duty over their objection unless you could show extreme public harm and that would be an emergency basis. There is no evidence of that in this case. All we have is a generalized concern. So if the board would grant a deferral where there is an obligation to pay, Mr. Hallem said he cannot give the board an answer as to whether or not that would be done. Mr. Hallem said he does not believe the board could impose the fee because the South Central Water Development District has said they do not want the permit. The question is if the board even has the ability to defer now since the body that has made the application and who has the sole right to continue with the permit, and it has said it does not wish to retain the permit.

Mr. Bjork asked if South Central Water Development District would be obligated to pay the fee if the board were to grant a deferral?

Mr. Hallem said he does not believe the board can legally impose the fee.

Mr. Bjork asked if the board deferred this and South Central Water Development does not pay the fee, what effect does that have? Does that, in effect, cancel the future use permit?

Chairman Freeman said the board would be thumbing its nose at the legislature because it could defer every one of these just to avoid the fee.

Mr. Hallem said the way the law is, the permit terminates unless the board affirmatively allows it to continue. He does not know that the board can create something going forward when there is not an application. Mr. Hallem said his understanding is that future use permits are for a period of time that can be renewed by the board, but that period has expired, so the board has nothing to react upon and there hasn't been an affirmative action by the applicant to continue the permit. Mr. Hallem said the reason the board deferred the permit at the last meeting is because the applicant requested it.

Mr. Holzbauer said the reason why he is concerned is the Lake Andes-Wagner Irrigation District was hoping that legislative action would take place on the cost of these future use permits.

Mr. Bjork said he does not know that that would not affect what the board is doing here today.

Mr. Holzbauer said if the board cancels the future use permit today, the 1969 priority date is gone.

Chairman Freeman said the party to this cancellation has requested that the future use permit be cancelled twice and their board voted not to renew the permit.

Motion by Bjork, seconded by Dixon, to cancel Future Use Permit No. 1688B-3, South Central Water Development District.

Mr. Hoyt said he can appreciate the legal aspects of this and he would like to accommodate Mr. Holzbauer in that despite the fact that apparently the South Central Water Development Board of Directors has acted, then reconsidered, and then reaffirmed what they are doing, that there may be an opportunity for a successor in interest either to fund this or to enable in some way a continuation of that priority date. Mr. Hoyt said for that reason, despite the action by South Central Water Development District board, he fails to see the need to proceed expeditiously while there might be an opportunity to explore other alternatives. He said the water development district were to request cancellation of this permit as of the date of their application or their request for cancellation, he believes the Water Management Board could look favorably on that and relieve them of the fees. Mr. Hoyt said he would support a more creative approach to enable Mr. Holzbauer's group to explore an opportunity to preserve the priority date in some way, most likely the water district, but some agreement to provide funds to the water district to continue the future use permit. Mr. Hoyt said he would be voting against the motion.

The motion carried with Hoyt casting the only dissenting vote. Holzbauer abstained from voting.

SEVEN YEAR REVIEW OF FUTURE USE PERMIT NO. 512-2, CITY OF HOT SPRINGS:

Mr. Gronlund noted that the board packet included a letter from the city of Hot Springs requesting to retain its future use permit, a copy of the public notice, the Affidavit of Publication, and the chief engineer's recommendation. The city's request included the pumping records from the past three years, but these were not included in the board packet.

The future use permit was approved in 1959 and currently reserves 1,846 acre-feet from alluvium along Fall River near Hot Springs for future development.

The city's submittal of pumping records show that they divert approximately 1,300 acre-feet of water per year for use by the city.

Mr. Gronlund said there is a board rule that states that the board may limit future use reservations to two times the amount actually put to beneficial use, so with the city's current use of 1,300 acre-feet they are within two times the amount.

The chief engineer recommended that Future User Permit No. 512-2, city of Hot Springs, remain in effect for 1,846 acre-feet annually.

Mr. Gronlund stated that this was public noticed in two newspapers, as required by law and no petitions to intervene were received in response to the public notice.

Motion by Comes, seconded by Hoyt, that Future Use Permit No. 512-2, city of Hot Springs, remain in effect for 1,846 acre-feet annually. Motion carried.

CANCELLATION CONSIDERATIONS: Eric Gronlund reported that prior to the meeting the board received a table listing the proposed cancellations, the notices of cancellation, and the chief engineer's recommendations.

Twelve water rights/permits were scheduled for cancellation. The owners were notified of the hearing and the reason for cancellation. The department received one letter in response to the notices of cancellation regarding Water Right No. 2115A-3, Jack Garrigan. Mr. Gronlund requested the board act on that cancellation separately.

The following eleven water rights/permits were recommended for cancellation for the reasons listed:

Water Right No. 265-1 and Water Permit No. 1624-1 filed by 3X Ranch LLC; abandonment.
Water Permit No. 1769-1 filed by Lee Ahrlin now owned by Loren & Kelly David; non-construction.

Water Permit No. 1205-2 filed by Gaylord Saucerman; abandonment (Cancellation is for irrigation component only. The 200 acre-feet storage dam is still in place and used for livestock watering purposes.)

Water Right No. 1241A-2 and Water Right No. 1241B-2 filed by Dakota Partnership dba Triple Seven Ranch now owned by the US Forest Service; abandonment/forfeiture.

Water Right No. 1460-2 filed by Thomas Marts; abandonment/forfeiture.

Future Use Permit No. 1148-3 filed by the city of Miller, SD; abandonment.

Water Right No. 2115A-3 filed by Jack Garrigan; abandonment.

Water Right No. 2699-3 filed by Floyd Timm now owned by Howard and Kathie Bragg; abandonment/forfeiture.

Water Permit No. 6400-3 filed by Oscar Inc.; non-construction.

Water Permit No. 6726-3 filed by Ron L. Young now owned by Jonathon Hofer; non-construction.

Todd Wilkinson requested an explanation regarding cancellation of Water Permit No. 6400-3 for Oscar Inc.

Mr. Gronlund explained that Water Permit No. 6400-3 is a permit from the James River in Spink County for a number of quarter sections. The date to complete construction on that water permit was 2008. The irrigation system was not completed by that time. Oscar Peterson came into the Water Rights office and discussed the permit with staff. The permit is not eligible for reinstatement under state law. Mr. Gronlund stated that Mr. Peterson reapplied and now has a water permit back in place for those same acres.

Motion by Hoyt, seconded by Comes, to follow the chief engineer's recommendation for cancellation of the eleven water rights/permits for the reasons listed. Motion carried.

CANCELLATION CONSIDERATION FOR WATER RIGHT NO. 2115A-3, JACK GARRIGAN: Diane Best offered DENR Exhibit 1, a map showing the location of Water Right No. 2115A-3, and the history on it shown by circles that represent center pivots; and DENR Exhibit 2, the agency file. The exhibits were admitted into the record.

Mr. Best provided the board with a copy of the statutes and rules that deal with abandonment or forfeiture of water rights.

Eric Gronlund testified that the board packet contained the Notice of Cancellation, the chief engineer's recommendation, the letter submitted by Mr. Baumann, member of Plum Creek Farms, the Notice of Auto Delay of the October 3, 2012, scheduled hearing. The board packet did not contain the November 7, 2012, Notice scheduling the hearing for today, but it is included in the agency file.

Mr. Gronlund reported that this water permit was obtained in 1974 to appropriate 9.15 cfs from the Missouri River to irrigate 640 acres in Sully County, north of Pierre, commonly known as the Okobojo area. There was an amendment to the permit in 1994 to correct the location of some of the irrigated lands. Based on that amendment, the water license was actually issued for what was developed at the time, which was 8.44 cfs, approximately 3,800 gpm, from the river to a regulating dam and then applying to the land either directly from the river or from the regulating dam for total irrigation of 422.5 acres. Mr. Gronlund stated that the department's records show that this land was in CRP, which is an exception to forfeiture for non-use, from 1998 to 2008.

Mr. Gronlund discussed DENR Exhibit 1, the map that shows what acres are authorized for irrigation. After the land came out of CRP, it is not uncommon for staff to contact the owner as to whether or not irrigation is going to start up again. That process started in 2009. Contact was made with Mr. Baumann's wife, who indicated that they had just purchased the land in 2009 and they did not intend to irrigate. Mr. Gronlund stated that based on that information, staff believed the permit would likely be subject to cancellation.

In addition, staff contacted the Sully County Director of Equalization to determine land ownership, and once obtained, contacts were made.

Mr. Gronlund said DENR Exhibit shows the irrigated acres and it attempts to show some of the land ownership. Based on staff contacts in 2010, a Notice of Transfer was filed for the southwest quarter of Section 5 (pivot circle in pink on Exhibit 1) by Sam Braun (2115B-3). In 2011, a Notice of Transfer was filed for the northwest quarter of Section 5 (pivot circle in yellow on Exhibit 1) by James McDougall (2115C-3). Both had indicated a desire to irrigate. Mr. Gronlund stated that 2115A-3 was maintained for the remaining acres. These are the acres shown in Section 8 (green and blue circles on Exhibit 1).

The second page of Exhibit 1 shows a breakdown of what the department received from the Director of Equalization regarding land ownership in relation to where those two pivots had at one time been.

Mr. Gronlund reported that in Section 8, the transfer of those other two parcels left 2.34 cfs application or 5 cfs diversion rate from the Missouri River storage to irrigate 171 acres in those three parcels, which as staff understood it, was owned by three different property owners.

Mr. Gronlund reiterated that in 2009, staff made contact with Mrs. Baumann and documented it in the file. Staff made contact with Mr. Garrigan, who was the original water right holder prior

to 2008. He indicated to staff that he didn't really own any of that land anymore, but the Director of Equalization still had him listed so the department provided him notice, and Wyman Johnson indicated that he had always owned that land and it was not irrigated so he had no problem with moving forward with cancellation.

Mr. Gronlund testified that the department sent out the Notice of Cancellation for an October 3, 2012, hearing. The department received a letter from Mr. Baumann expressing opposition to the cancellation. Mr. Gronlund said prior to 2008, this land was in CRP so the 10-year period does not count against them as far as the forfeiture statute. Mr. Bauman's letter states that he took ownership in 2009 and that the pivots were removed in the spring of 2012 and that they were doing some cost analyses to bring the system back on line.

Mr. Gronlund said there has been four years of non-use without an explanation of whether legal excuse exists. Legal excuse includes but is not limited to unavailability of water, legal proceedings that prevented the use of water, or climatic conditions that would have resulted in a waste of water.

Mr. Gronlund stated that staff realizes that the Missouri River went through quite an event in 2011 with high water levels and flooding, which could constitute legal excuse. Prior to that, there were a number of irrigators along the Missouri River that were having to chase the water with their intakes. Mr. Gronlund said he does not know if that was the situation here.

Mr. Hoyt asked if the board canceled the water right, what would be Mr. Baumann's recourse if he wanted to irrigate?

Mr. Gronlund said Mr. Baumann could apply for a new water permit.

Mr. Hoyt asked if the only jeopardy that Mr. Baumann would have in the event that this water right were cancelled would be the priority date?

Mr. Gronlund answered that the priority date would change and there would be a cost for public notice.

Mr. Hoyt said he read in one of the documents provided to the board that if ownership of the land is changed, the water right could be reconfigured based on the present ownership of the land.

Mr. Gronlund stated that water rights are appurtenant to the land so when land ownership changes it is common that those water rights are split proportionate to the land ownership.

Mr. Gronlund stated that staff's initial contact with Mrs. Baumann was in 2009 and the actual Notice of Cancellation went out in 2012. Mr. Baumann's petition states that this is basically the first he has heard about the cancellation.

Mr. Hoyt asked based on the present ownership by Plum Creek Farms and Mr. Baumann, how would the water be proportionately changed to reflect the current ownership?

Mr. Gronlund answered that he does not know specifically, but he has had a discussion with Mr. Baumann that if the board were to allow this permit to remain in effect, the staff would require him to submit a Notice of Transfer for his proportionate share of Plum Creek's ownership and also that he would be on notice that basically he has two more years to develop the permit or it would be subject to forfeiture under the statute, if the board saw fit to see legal excuse existed.

Jed Baumann managing member of Plum Creek Farms, Inc., was administered the oath and requested that the board allow two additional years to develop the permit. When he purchased the property in 2009, the irrigation pivots and the surface elements were in a state of disrepair. The underground infrastructure was in place and it has not been determined if there is any damage to that yet.

Mr. Baumann stated that since receiving the cancellation notice in 2012, he has contacted Inman Irrigation in Aberdeen. They have been to the site and are determining how much the construction cost will be. Mr. Baumann has also contacted Oahe Electric to determine the power needs. He said when Mr. Garrigan developed Okobojo Estates, they removed three phase electrical service at the site. Mr. Baumann said he can use single phase electrical service that exists near the site and convert it to three phase electrical service for the pumps.

Mr. Baumann noted that regarding Exhibit 1, he owns a half section of land within the blue circle in Section 8.

Mr. Baumann asked the board not to cancel Water Right No. 2115A-3.

Ms. Best asked Mr. Baumann to identify on page 2 of Exhibit 1 which acres he believes would be subject to cancellation.

Mr. Baumann said the green hatch mark would be owned by Wyman Johnson so that would be abandoned. He said the blue hatch mark is Okobojo Estates, so that would be abandoned, so any of the area hatch marked in red would be subject to non-cancellation. The total of the green circle and half of the blue circle is between 150 and 160 acres.

Ms. Best asked why Mr. Baumann was unable to irrigate in 2009, 2010, 2011, and 2012. Mr. Baumann answered that 2009 was a drought year and the previous landowner had the rights on the farm ground that year. In 2011 there was flooding along the Missouri River and in 2012 was another drought year.

Ms. Best asked if when the Missouri River flooded whether there was so much water that the irrigation system's intake would not have been able to function due to the water level.

Mr. Baumann said the intake is at the back of Okobojo Creek and it would have been inundated with the height of the water.

Ms. Best asked even if Mr. Baumann had an intake that was able to bring water from the Missouri River, would he have needed the water in 2011?

Mr. Baumann said the irrigation pivots were in disrepair so he could not have used them.

Chairman Freeman said during the flood of 2011, Mr. Baumann would not have been able to get water to the land even if the irrigation equipment had been working because the intake was flooded.

Mr. Baumann requested that a two-year extension be granted so it can be determined whether the irrigation makes economic sense. If it does, construction is anticipated in 2013 and the system would be used in 2014.

Chairman Freeman requested board action.

Motion by Holzbauer, seconded by Comes, not to cancel Water Right No. 2115A-3.

Ms. Best said a portion of the water right is still subject to cancellation.

Mr. Hallem said the proper motion would be not to cancel Mr. Baumann's portion, which would be the pink portion in Exhibit 1. There was no evidence from anyone else that has been presented here today, so by default that would be subject to cancellation.

Amended motion by Holzbauer, seconded by Comes, not to cancel Mr. Baumann's portion of Water Right No. 2115A-3. Motion carried.

CANCELLATION OF WATER RIGHT NO. 282-3, RENAE VESKRNA MOROG: Ray Rylance, attorney for Renae Morog, stated that Ms. Morog had filed opposition to the cancellation of Water Right No. 282-3. Mr. Rylance stated that Ms. Morog has decided to withdraw her opposition to the cancellation.

Ms. Best requested that the board cancel Water Right No. 282-3, Renae Veskrna Morog, as recommended by the chief engineer.

Motion by Comes, seconded by Bjork, to cancel Water Right No. 282-3, Renae Veskrna Morog. Motion carried.

UNOPPOSED NEW WATER PERMITS ISSUED BY THE CHIEF ENGINEER WITHOUT A HEARING BEFORE THE BOARD: Prior to the meeting the board received a copy of the table listing the unopposed new water permits issued by the chief engineer. See attachment.

NEW WATER PERMIT APPLICATIONS: The pertinent qualifications attached to approved water permit applications throughout the hearings are listed below:

Well Interference Qualification

The well(s) approved under this permit will be located near domestic wells and other wells which may obtain water from the same aquifer. The well owner under this Permit shall control his withdrawals so there is not a reduction of needed water supplies in adequate domestic wells or in adequate wells having prior water rights.

Well Construction Rule Qualification No. 1

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) from the producing formation to the surface pursuant to Section 74:02:04:28.

Well Construction Rule Qualification No. 2

The well(s) authorized by Permit No. _____ shall be constructed by a licensed well driller and construction shall comply with Water Management Board Well Construction Rules, Chapter 74:02:04 with the well casing pressure grouted (bottom to top) pursuant to Section 74:02:04:28.

Irrigation Water Use Questionnaire Qualification

This permit is approved subject to the irrigation water use questionnaire being submitted each year.

Low Flow Qualification

Low flows as needed for downstream domestic use, including livestock water and prior water rights must be by-passed.

WATER PERMIT APPLICATION NO. 7373-3, TERRY WIETING: Ken Buhler presented his report on the application.

Water Permit Application No. 7373-3 proposes to appropriate 1.78 cubic feet of water per second (cfs) from two wells approximately 75 feet deep, to be completed into the Tulare:Western Spink/Hitchcock aquifer to irrigate 160 acres.

At the July 2012 Water Management Board meeting, the board considered six applications from the Tulare:Western Spink/Hitchcock aquifer. At that time, the board approved permits appropriating the amount of unappropriated water believed to be available from the aquifer and therefore, the aquifer was fully appropriated.

Mr. Buhler said when he wrote his report and based on the best information available at the time, there does not appear to be a reasonable probability that there would be unappropriated water available to satisfy this permit. However, in the interim, the cancellation consideration for Water Permit No. 282-3 was scheduled for the October 3, 2012, board meeting, and depending on the disposition of that permit as determined by that board meeting there may or may not be some water that could revert back to public water and subject to appropriation.

Mr. Buhler said the chief engineer recommended the Water Management Board defer this permit application.

Ms. Best said if the board defers the application, staff will determine whether there is additional water available from the Tulare:Western Spink/Hitchcock aquifer in light of the cancellation of No. 282-3.

Mr. Buhler noted that his report was written for three applications, Water Permit Application No. 7373-3, Terry Wieting, and Water Permit Application Nos. 7378-3 and 7379-3, Riverside Hutterian Brethren. The chief engineer recommended denial of Nos. 7378-3 and 7379-3 and those permits have been administratively withdrawn.

Mr. Hoyt said since the board earlier cancelled No. 282-3, the water appropriated for that permit could be available.

Mr. Buhler said the amount of water that may revert back to the public and be available for unappropriated water from the cancellation of No. 282-3 has not been quantified.

Terry Wieting stated that he had no objection to deferral of the application.

Todd Wilkinson, attorney for Oscar Inc. and Lenny Peterson, stated that his clients had no objection to deferral of the application.

Mr. Comes asked when this matter would be brought back before the board.

Mr. Gronlund said it is staff's intention to bring this matter back at the March 2013 meeting.

Chairman Freeman requested board action.

Motion by Bjork, seconded by Hoyt, to defer Water Permit Application No. 7373-3, Terry Wieting. Motion carried.

APPLICATIONS FROM THE TULARE-EAST JAMES AQUIFER: Chairman Freeman stated that he had a conflict with one of the applications, and he recused himself from participating. Chairman Freeman turned the gavel over to Vice Chairman Comes.

Mr. Hallem said Chairman Freeman has not had any discussions with anybody or expressed any opinions on this matter.

Ms. Best recommended the board hear all of the applications together.

Jeff Hallem said the board will consider Water Permit Application Nos. 7295-3, William F. St. Clair, 7316-3, Van Buskirk Farms LLP, 7348-3, Michael Sentell, 7364-3, Wipf Acres LP, and 7365-3, 7366-3, 7367-3, 7368-3, 7369-3, and 7370-3, Huron Colony.

Mr. Hallem asked the parties to identify themselves and state whether they have any objection to combining these applications for the purpose of hearing before the board.

Ray Rylance, attorney for Van Buskirk Farms, Michael Sentell, and Wipf Acres, stated that he had no objection to combining the applications for hearing.

Todd Wilkinson, attorney for Oscar Inc., Lenny Peterson, and Floyd Peterson, stated that he had no objection to combining the applications for hearing.

Ryan Vogel, Huron Hutterian Brethren, Inc. had no objection to combining the applications for hearing.

Diane Best, Assistant Attorney General, appearing on behalf of the chief engineer, had no objection to combining the applications for hearing.

William St. Clair stated that he did not have counsel and he would like his application to be heard individually because his application is the only one that is not contested. He objected to including his application with the other contested applications for hearing.

Mr. Rylance said Mr. St. Clair's application is unopposed, so he had no objection to the board hearing Mr. St. Clair's application separately.

Ms. Best stated that the DENR report includes all 10 of the applications as one report, so Mr. Buhler would be giving his presentation twice.

Mr. Hallem said the parties to the contested hearing, because the board already hearing it, could ask the board to take notice in Mr. St. Clair's proceeding and Mr. Buhler would not have to present the information twice, but that would be up to the parties in the second action as to how they wish to proceed.

Ms. Best said the request for consolidation went to the presentation of the evidence. The application is uncontested and the chief engineer has recommended approval. Ms. Best said by consolidating the hearing, she was not suggesting that Mr. St. Clair's application be included as a contested application.

Mr. Hallem recommended the board go forward with the uncontested application and the other parties would have the opportunity to ask the board to take notice on it, which eliminates Mr. Buhler from having to present the information twice. Mr. Buhler would be subject to cross-examination but the parties would have the ability to hear the direct testimony, then cross-examination of the parties could take place for the contested case proceeding.

Motion by Bjork, seconded by Hoyt, to deny the request to consolidate, and separate the St. Clair's uncontested application from the contested applications for hearing. Motion carried.

Mr. Bjork asked if since Mr. St. Clair's application was uncontested, does the board even need to hear it?

Ms. Best said the uncontested application was noticed for hearing because it involves the Tulare:East James aquifer, so the board needs to act on the application.

Mr. Bjork stated that the statutes provide that an uncontested application is automatically approved by the chief engineer.

Ms. Best said that is true if the notice is provided in that manner. She said the application filed by Mr. St. Clair was noticed earlier this year and the staff recommended deferral of the application, and the board deferred it for hearing. This case is now properly before the board rather than the chief engineer to issue the permit on his own. Ms. Best said the department was prepared to proceed with the report on this application and to recommend approval.

Mr. Rylance asked if Mr. Buhler's testimony is going to be presented in Mr. St. Clair's hearing and the parties will cross-examine in this hearing for the next hearing?

Ms. Best stated that Mr. Buhler will present his testimony, including the full report and a PowerPoint presentation, concerning the availability of water from the aquifer and then the board will address the St. Clair application and then at the initiation of the next hearing, Ms. Best will ask the board to consider the evidence that has already been tendered for this application, then there will be an opportunity for cross-examination of Mr. Buhler for the second hearing.

Mr. Hallem stated that the following was provided to the board prior to hearing: Mr. Buhler's report dated August 23, 2012, on Water Permit Application Nos. 7295-3, William F. St. Clair, 7316-3, Van Buskirk Farms LLP, 7348-3, Michael Sentell, 7364-3, Wipf Acres LP, and 7365-3, 7366-3, 7367-3, 7368-3, 7369-3, and 7370-3, Huron Colony; the revised recommendation of the chief engineer for Nos. 7295-3, William F. St. Clair, 7316-3, Van Buskirk Farms LLP, and 7348-3, Michael Sentell; the recommendation of the chief engineer for Nos. 7364-3, Wipf Acres LP, and 7365-3, 7366-3, 7367-3, 7368-3, 7369-3, and 7370-3, Huron Colony; and copies of the statutory notices that were published in the newspapers.

Ms. Best made an opening statement. She offered DENR Exhibit 1, the agency file, and DENR Exhibit 2, Ken Buhler's Vita. The exhibits were admitted into the record.

Water Permit Application No. 7295-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well approximately 90 feet deep, to be completed into the Tulare: East James aquifer to irrigate 120 acres. This application was deferred by the Water Management Board on March 7, 2012, to allow time to determine the availability of water from the Tulare: East James aquifer.

The Tulare: East James aquifer covers parts of Spink and Beadle counties. The aquifer is basically east of Doland, SD and east of the James River.

Ken Buhler offered a PowerPoint presentation discussing the staff's analysis of availability of water in the Tulare: East James aquifer.

In 1976 and 1977 the number of water permit applications from Spink County nearly doubled. Between 1954 and 1975, there had been 52 applications for appropriation from the Tulare: East James aquifer.

The staff asked the Water Rights Commission to defer all applications from the Tulare:East James aquifer until further studies, including a water budget and computer model, for Spink County could be completed.

In 1978, the Water Rights Commission deferred 15 application out of the Tulare: East James aquifer, of which eight of those applications were from the artesian portion of the aquifer and seven of the applications were from the water table portion of the aquifer.

In 1981, there were six water permit applications approved from the Tulare:East James aquifer. Those that had been deferred were part of the six that were approved. In 1982, it was basically the end of development from the Tulare:East James aquifer.

In 1984, the chief engineer recommended denial of Water Permit Application No. 5009-3 for Duane Muxen because there was not a reasonable probability that unappropriated water was available. At that time, the Water Rights staff and the Water Rights Commission considered the Tulare:East James aquifer fully appropriated. Mr. Muxon did not authorize publication and the application was deemed withdrawn.

From 1984 to 2006 seven applications were denied and two applications were withdrawn.

In 2005, the Circuit Court considered an appeal of the denial of an application from the Tulare:East James aquifer, and at that time the Circuit Court ruled (Hines decision) that if the average annual recharge was going to be used to calculate whether unappropriated water was available, the average annual withdrawals also need to be used.

After the Hines decision, in 2005, there were four water permit applications for water from the Tulare:East James aquifer. At that time, staff looked at the average annual recharge rate versus the average annual withdrawal and determined the number of acres that could still be permitted assuming an average application rate.

In 2006, eight more applications from the Tulare:East James aquifer were received. On October 11, 2006, the Water Management Board approved three of the applications. Two applications were denied and three applications were withdrawn.

The aquifer was declared fully appropriated in 2006.

In 2011, Water Permit No. 7235-3 for Peterson Farms was approved. That application was for the transfer of water from one location to another and changing acres from one location to another. No new water from the aquifer was appropriated.

In 2012, two applications were deferred. One of those applications, is Water Permit Application No. 7295-3.

Mr. Buhler stated that the aerial extent of the aquifer was re-delineated. Mr. Buhler's presentation included a map showing all of the test holes, all of the domestic well logs, all of the observation wells, and all of the irrigation wells that were drilled in the area of this application.

By looking at those well logs, staff was able to determine the size of the Tulare:East James aquifer.

The Tulare East James aquifer is a system of interconnected sand and gravel layers that were deposited as outwash by meltwater from receding glaciers. Generally, wells are less than 130 feet deep in this aquifer. The average thickness of the aquifer in Spink County was estimated to be 37 feet. There are places that the aquifer is in excess of 75 feet thick.

The aquifer underlies approximately 123,578 acres in Spink and Beadle Counties. The aquifer contains approximately 685,857 acre-feet of recoverable water in storage. The aquifer is buried over most of its area and is predominately under confined conditions. The water levels of wells completed into the Tulare: East James aquifer range from more than 50 feet below grade to above ground surface (i.e. flowing wells).

Pursuant to SDCL 46-2A-9, a permit to appropriate water may be issued only if there is reasonable probability that there is unappropriated water available for the applicant's proposed use, that the proposed diversion can be developed without unlawful impairment of existing rights, and that the proposed use is a beneficial use and in the public interest.

The probability of unappropriated water being available from the Tulare: East James aquifer can be evaluated by considering SDCL 46-6-3.1 which requires "No application to appropriate groundwater may be approved if, according to the best information reasonably available, it is probable that the quantity of water withdrawn annually from a groundwater source will exceed the quantity of the average estimated annual recharge of water to the groundwater source."

In applying SDCL 46-6-3.1, the Sixth Judicial Circuit Court ruled in 2005 that if the Water Management Board uses average annual recharge, then it should also use average annual withdrawals to determine if unappropriated water is available from the aquifer (*Hines v. South Dakota Dept. of Environ. and Nat'l. Resources*, Hughes County 04-37 (Memorandum Decision, April 29, 2005)).

Mr. Buhler stated that the availability of unappropriated water from the Tulare: East James aquifer was evaluated based on observation well data and through consideration of a hydrologic budget for the aquifer.

ARSD 74:02:05:07 requires that the Water Management Board shall rely upon the record of observation well measurements to determine that the quantity of water withdrawn annually from the aquifer does not exceed the estimated average annual recharge to the aquifer.

The DENR Water Rights Program monitors 34 observation wells completed into the Tulare: East James aquifer. Hydrographs for four of these observation wells are shown in Mr. Buhler's report. The hydrographs are representative for the Tulare: East James aquifer and show that the aquifer readily responds to climatic conditions, with rising water levels during wet years and declining water levels during dry years.

An analysis of observation well hydrographs was used to quantify the change in volume of water in storage in the aquifer. The analysis involved identifying observation wells completed into the unconfined portion of the Tulare: East James aquifer and determining the change of the water level in each well for every year. The amount of water represented by a change in water level was determined by multiplying the water level change by the aquifer's specific yield (0.15). The average change in storage was applied over the portion of the aquifer that is under unconfined conditions to determine the volume in acre-feet per year of the change in storage.

This analysis is restricted to observation wells completed into an area where the aquifer is under unconfined conditions.

Seven Water Rights observation wells were used to analyze the Tulare: East James aquifer. These wells were chosen because they were in portions of the aquifer that remained unconfined for their entire period of record and the wells were determined to accurately reflect aquifer conditions. Although three of these observation wells have data older than 1980, the time period used for analysis was 1980-2011 to maximize the record-years of data.

The average annual water level change for the seven observation wells for the period of 1980-2011 is +0.31 feet. Therefore, the water level for the unconfined portion of the aquifer increased an average of 0.31 feet per year from 1980-2011.

The areal extent of the Tulare: East James aquifer that has remained unconfined throughout the entire period of record was delineated by examining the logs of test holes, domestic and irrigation wells and observation wells as compared to a September 2011 potentiometric surface derived from the Water Rights Observation Well Network. Approximately 22,477 acres were determined to be under unconfined conditions in September 2011.

The average annual well withdrawal from the Tulare: East James aquifer is from 1979-2011 estimated to be 6,700 acre-feet per year. The Water Rights Program observation well data documents that over the period of record the potentiometric surface of the Tulare: East James aquifer has averaged an upward trend.

The Water Rights Program observation well data documents that well withdrawals from the Tulare: East James aquifer have not had a long term effect on the amount of water in storage in the aquifer. The observation well data documents that the configuration of the potentiometric surface of the Tulare: East James aquifer has not changed significantly with time or increased development. The observation well data documents that recharge to the Tulare: East James aquifer has exceeded the discharge from the aquifer by an average of 1,045 acre-feet per year.

Observation well data documents that the development that has occurred from the Tulare: East James aquifer has had an inconsequential effect on the aquifer over the long term. The water level record for Observation Well SP-66C extends back to June 9, 1967; a time span that includes most of the period of irrigation development from the aquifer. The observation well is located a short distance from several high capacity irrigation wells and the drawdown from the irrigation withdrawals is obvious. However, over the period of record of the hydrograph, the number of appropriations from the Tulare: East James aquifer increased from 25 to 113 and the

number of acres authorized for irrigation increased from 4,210 to 15,571. The increased development is not apparent in the hydrograph.

All of the observation well data shows that at the current level of development, climatic conditions greatly mask any temporal effects of well withdrawals. Therefore, the data shows that the combined recharge to and natural discharge from the Tulare: East James aquifer significantly exceeds long term well withdrawals.

The potentiometric surface of the Tulare: East James aquifer was determined for two time periods based on the observation well measurements for September 1980 and for September 2011. A map showing the two potentiometric surfaces is included in Mr. Buhler's report.

Although the September 1980 water levels were generally lower than the September 2011 water levels, the configuration of the potentiometric surface has not changed significantly over time. It is clear that the amount of water in transient storage in the aquifer has not been significantly affected by increased appropriations and well withdrawals from the aquifer. The stress on the aquifer over time with increased appropriations is not evident in the records of water levels, therefore recharge to the aquifer and natural discharges from the aquifer significantly exceed well withdrawals.

Average annual recharge to the Tulare: East James aquifer was estimated by Kuiper in 1984 using a digital groundwater model to be 0.38-1.52 inches per year with a "best fit" of 0.76 inches per year. Assuming the area of the aquifer is 123,578 acres, average annual recharge per the Kuiper estimate is 7,827 acre-feet annually.

Based on a regional flow net analysis using September 2011 water level data, the amount of water moving through the Tulare: East James aquifer is estimated to be 8,285 acre-feet per year.

Referring to Table 2 on page 15 of his report, Mr. Buhler stated that the total well withdrawal from the aquifer including domestic use is expected to average less than 6,700 acre-feet/year. This total withdrawal from the Tulare: East James aquifer due to pumping is around 0.98% of the estimated recoverable water in storage in the aquifer (6,700 acre-feet pumped per year versus 685,857 acre-feet of recoverable water in storage).

A comparison of the estimated average well withdrawals from the Tulare: East James aquifer (6,700 acre-feet/year) with the estimated average annual recharge rate for the aquifer (7,827 acre-feet/year) shows that approximately 1,127 acre-feet of unappropriated water is available from the Tulare: East James aquifer.

In the past, the Water Management Board has considered the number of additional acres that can be permitted for irrigation given a volume of unappropriated water, as a function of the average irrigation application rate (i.e. inches of water applied per acre) for the aquifer.

The average annual application rate calculated from the total volume of water reported pumped and the total acres reported irrigated for the Tulare: East James aquifer for the period of 1979-2011 is 7.68 inches per year.

Mr. Buhler stated that observation well data documents that recharge to the Tulare: East James aquifer has exceeded the discharge from the aquifer by an average of 1,045 acre-feet per year. A comparison of the estimated average annual recharge to the aquifer with the estimated average annual well withdrawals from the aquifer from 1979-2011 shows that 1,127 acre-feet of unappropriated water is available from the Tulare: East James aquifer. The average annual irrigation application rate for the Tulare: East James aquifer from 1979-2011 has been 7.68 inches per year. Assuming an average application rate of 7.68 inches per year, an average of 1,633 additional acres could be irrigated, based on the observation well analysis of the aquifer. Based on Kuiper, assuming an average application rate of 7.68 inches per year, an average of 1,761 additional acres could be irrigated based on a comparison of average annual recharge and average annual well withdrawals.

The following are Mr. Buhler's conclusions:

1. The Tulare: East James aquifer is an extensive, primarily buried, generally confined glacial outwash aquifer.
2. The best information currently available indicates that the Tulare: East James aquifer underlies approximately 123,578 acres of Spink and Beadle Counties.
3. The best information currently available identifies an average annual recharge rate to the Tulare: East James aquifer as approximately 0.76 inches per year.
4. The volume of average annual recharge to the Tulare: East James aquifer based on an area of 123,578 acres and a recharge rate of 0.76 inches per year is approximately 7,827 acre-feet per year.
5. The average annual well withdrawal from the Tulare: East James aquifer is from 1979-2011 estimated to be 6,700 acre-feet per year.
6. The SD DENR-Water Rights Program observation well data documents that over the period of record the potentiometric surface of the Tulare: East James aquifer has averaged an upward trend.
7. The SD DENR-Water Rights Program observation well data documents that well withdrawals from the Tulare: East James aquifer have not had a long term effect on the amount of water in storage in the aquifer.
8. The SD DENR-Water Rights Program observation well data documents that the configuration of the potentiometric surface of the Tulare: East James aquifer has not changed significantly with time or increased development.
9. The SD DENR-Water Rights Program observation well data documents that recharge to the Tulare: East James aquifer has exceeded the discharge from the aquifer by an average of 1,045 acre-feet per year.
10. The average annual irrigation application rate for the Tulare: East James aquifer from 1979-2011 has been 7.68 inches per year.
11. Assuming an average application rate of 7.68 inches per year, an average of 1,761 additional acres could have been irrigated based on a comparison of average annual recharge and average annual well withdrawals
12. Assuming an average application rate of 7.68 inches per year, an average of 1,633 additional acres could have been irrigated based on the observation well analysis of the aquifer.

13. Well interference has never been a problem from the Tulare: East James aquifer and there is a reasonable probability that additional irrigation wells could be completed into the aquifer without adversely impacting existing users.
14. There is a reasonable probability that unappropriated water is available from the Tulare: East James aquifer.

Ms. Best offered DENR Exhibit 3, Mr. Buhler's PowerPoint presentation. The exhibit was admitted into the record.

In response to questions from Ms. Best, Mr. Buhler present three slides explaining water table and confined conditions.

Ms. Best offered DENR Exhibit 4, the three slides depicting water table and confined conditions. The exhibit was admitted into the record.

Mr. Hoyt said he would like to know the names of the applicants, permit numbers, and acreages the permits were approved for when it was determined that more water was available in 2006.

Mr. Buhler agreed to provide Mr. Hoyt with this information after the break.

Mr. Comes said after the Hines decision in 2005 there were additional permits granted and there were also permits that were denied later that year. He asked if the Hines decision caused staff to reevaluate the way DENR looks at water availability.

Mr. Buhler stated that in 2006 there were two sets of permits that were approved. A group of permits were approved immediately following the Hines decision and then based on that evaluation of how much water is available and how much went out, three more applications came in.

Mr. Comes asked what caused staff to look at this again from 2006 to 2012? Mr. Buhler answered that the applications before the board today caused staff to reevaluate the amount of water available.

Mr. Hoyt asked if the procedure Mr. Buhler referenced as to the 2011 applications would have been used in 2006 as well?

Mr. Buhler said they looked at average annual recharge minus average annual withdrawals equals a volume of water that is unappropriated water incorporating the average application rate calculated available acres. The difference is in 2006, there were 20 years of records used from 1986 to 2006, and staff used the entire period of record for the 2012 analysis.

Mr. Hoyt asked what notice is given to the public that water might be available in an aquifer for which previous applications were denied?

Mr. Buhler said that is communicated through the publication of notice for the permit application. Staff does its analysis after an application for a permit is received.

Mr. Hoyt asked if there is anything on the DENR website that shows unappropriated water that is available from different aquifers in the state. Mr. Buhler said that information is not on the DENR website.

Following the break, Mr. Buhler provided Mr. Hoyt with the following information regarding permits issued in 2006:

Permit No.	Applicant	Acres	Priority Date
6655-3	Oscar, Inc.	160	8/6/05
6656-3	Peterson Brothers	320	8/6/05
6675-3	William St. Clair	100	12/7/05
6676-3	William St. Clair	264	12/7/05
6712-3	Peterson Farms	136	4/4/06
6711A-3	Oscar, Inc.	304	4/4/06
6712A-3	Peterson Farms	Change of acres	

Mr. Hoyt asked if prior to the granting of the application for 6655-3, had the aquifer been determined to be fully appropriated?

Mr. Buhler answered that it had been determined to be fully appropriated.

Mr. Hoyt asked if it was following the granting of the application in Permit No. 6711A-3 determined to be fully appropriated?

Mr. Buhler answered that the aquifer was determined to be fully appropriated until the No. 7295-3 was received.

Ms. Best stated that Mr. Buhler has already testified as to water availability and impairment of existing rights, and the recharge rates. Public interest and beneficial uses are matters that the chief engineer would stipulate to in this case that the application is in the public interest and is a beneficial use.

Mr. Hallem asked if Mr. St. Clair had anything he wished to present to the board. He did not.

Vice Chairman Comes requested board action.

Motion by Hoyt, seconded by Bjork, to approve Water Permit Application No. 7295-3, William St. Clair, subject to the qualifications of the chief engineer. Motion carried.

The parties waived findings.

CONTESTED WATER PERMIT APPLICATIONS FROM THE TULARE:EAST JAMES
AQUIFER: Vice Chairman Comes opened the hearing at 2:30 p.m.

Water Management Board
December 6, 2012, Meeting Minutes

Mr. Hallem stated that prior to the hearing, the board received Mr. Buhler's report dated August 23, 2012, on Water Permit Application Nos. 7295-3, William F. St. Clair, 7316-3, Van Buskirk Farms LLP, 7348-3, Michael Sentell, 7364-3, Wipf Acres LP, and 7365-3, 7366-3, 7367-3, 7368-3, 7369-3, and 7370-3, Huron Colony; the chief engineer's recommendations for each applications, all dated September 6, 2012; copies of the statutory notices that were published in the newspapers; and the notices of intervention by Allen Wipf, Lenny Peterson, and Oscar, Inc., including a representation letter by Mr. Wilkinson.

Ms. Best asked that the record reflect that Mr. Allen Wipf was not present at today's hearing.

Ray Rylance represented Van Buskirk Farms, Michael Sentell, and Wipf Acres.

Todd Wilkinson, represented Oscar Inc., Lenny Peterson, and Floyd Peterson.

Ryan Vogel, represented Huron Hutterian Brethren, Inc.

Diane Best, Assistant Attorney General, represented the chief engineer.

Mr. Hallem asked if there was any objection to take notice of Ken Buhler's direct testimony in the previous case and to proceed the case from standpoint?

None of the parties objected.

The parties waived opening statements.

Ms. Best offered the following exhibits:

DENR 2 – Administrative record, No. 7316-3, Van Buskirk
DENR 3 - Administrative record, No. 7348-3, Sentell
DENR 4 – Administrative record, No. 7364-3, Wipf
DENR 5 – Administrative record, No. 7365-3, Huron Colony
DENR 6 – Administrative record, No. 7366-3, Huron Colony
DENR 7 – Administrative record, No. 7367-3, Huron Colony
DENR 8 – Administrative record, No. 7368-3, Huron Colony
DENR 9 – Administrative record, No. 7369-3, Huron Colony
DENR 10 – Administrative record, No. 7370-3, Huron Colony
DENR 11 – Ken Buhler Vita
DENR 12 – Ken Buhler report on applications
DENR 13 – Ken Buhler PowerPoint presentation
DENR 14 – Well log and illustration of water table & confined

The exhibits were admitted into the record.

Ms. Best stated that the chief engineer's recommendation for Permit Application No. 7366-3 was not signed in the copies the board received. The original recommendation in the agency file is signed.

Water Permit Application No. 7316-3 proposes to appropriate water at a maximum diversion rate of 4.5 cfs from two wells, approximately 80 feet deep, to be completed into the Tulare: East James aquifer. The wells are to be located in the W½ of Section 12, T114N-R62W and the water is to be used to irrigate 272 acres located in the W½ of Section 12, T114N-R62W. This application was deferred by the Water Management Board on May 2, 2012, to allow time to determine the availability of water from the Tulare: East James aquifer.

Water Permit Application No. 7348-3 proposes to appropriate water at a maximum diversion rate of 5.33 cfs from a gravel pit completed into the Tulare: East James aquifer located in the NE¼ SW¼ of Section 14, T114N-R62W. The water is to be used to irrigate 440 acres located in the NW¼ of Section 13, and the NW¼, W½ SE¼, SE¼SW¼ of Section 14; all of T114N-R62W. The Chief Engineer originally recommended deferral of this application to allow time to determine the availability of water from the Tulare: East James aquifer.

Water Permit Application No. 7364-3 proposes to appropriate water at a maximum diversion rate of 1.93 cfs from one well, approximately 100 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SE¼ of Section 7, T115N-R61W and the water is to be used to irrigate 135 acres located in the SE¼ of Section 7, T115N-R61W.

Water Permit Application No. 7365-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SW¼ of Section 20, T113N-R61W and the water is to be used to irrigate 132 acres located in the SW¼ of Section 20, T113N-R61W.

Water Permit Application No. 7366-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the NW¼ of Section 20, T113N-R61W and the water is to be used to irrigate 132 acres located in the NW¼ of Section 20, T113N-R61W.

Water Permit Application No. 7367-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the NE¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the NE¼ of Section 19, T113N-R61W.

Water Permit Application No. 7368-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the NW¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the NW¼ of Section 19, T113N-R61W.

Water Permit Application No. 7369-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SW¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the SW¼ of Section 19, T113N-R61W.

Water Permit Application No. 7370-3 proposes to appropriate water at a maximum diversion rate of 1.78 cfs from one well, approximately 95 feet deep, completed into the Tulare: East James aquifer. The well is to be located in the center of the SE¼ of Section 19, T113N-R61W and the water is to be used to irrigate 132 acres located in the SE¼ of Section 19, T113N-R61W.

Ms. Best asked if Mr. Buhler had additional testimony for this case, other than what he previously presented in the St. Clair case.

Responding to questions from Mr. Wilkinson, Mr. Buhler stated that the statute requires him to utilize the best information available and the best information available has been determined to be the monitoring wells and the Kuiper model.

Mr. Wilkinson said he would be specifically referencing No. 7365-3 – 7370-3 for Huron Colony because of the location of those particular applications. He asked if in his analysis of those permit applications, Mr. Buhler utilized seven wells? Mr. Buhler answered that is correct.

Mr. Wilkinson asked Mr. Buhler if Peterson Exhibit 1 shows the seven unconfined observation well locations. Mr. Buhler answered it does.

Mr. Wilkinson asked Mr. Buhler if Peterson Exhibit 2 shows all 34 observation well locations? Mr. Buhler said he believes it does.

Mr. Wilkinson offered the two exhibits and they were admitted into the record.

Mr. Wilkinson asked if the reason Mr. Buhler only used the seven wells is due to the fact that they were the only ones that were determined to be under pressure?

Mr. Buhler answered that these wells were unconfined for the entire period of record.

Mr. Wilkinson asked if the other wells were accurate as well?

Mr. Buhler answered yes.

Mr. Wilkinson asked if the data from the other wells that would be closer in proximity to the application would be relevant in determining availability of water?

Mr. Buhler answered yes, but he cannot quantify those that are under confined conditions.

Mr. Wilkinson asked what happens when there are not any that would fall under the definition of the seven that Mr. Buhler used. He said Mr. Buhler testified that he went from 18 to seven. He asked what happens when you get to zero?

Mr. Buhler said when an aquifer is totally under confined conditions, then the observation well data cannot be used to calculate water availability in the manner he did.

Mr. Wilkinson asked if the observation data can be calculated in a different way?

Mr. Buhler answered that a flow net analysis can be done with the observation well data in a confined aquifer, but an annual water level change cannot be done and used to equate the volume. He said the flow net analysis did incorporate every observation well throughout the aquifer.

Mr. Wilkinson said as he understands it, Mr. Buhler considered the well data from all 34 wells. He asked Mr. Buhler if he used the data from BD-77I shown on Peterson Exhibit 2. Mr. Buhler answered that he did.

Mr. Buhler said Figure 8 on page 11 of his report shows a water table, the potentiometric surface of the aquifer incorporating water levels of every well, including BD-77I, to come up with the potentiometric surfaces there and from those potentiometric surfaces he did the flow net analysis that is detailed on page 13 of his report.

Mr. Wilkinson asked if the Figure 8 on page 11 is an analysis of all 34 wells combined?

Mr. Buhler stated that it is.

Mr. Wilkinson asked if the recharge rate is different in different parts of the aquifer?

Mr. Buhler answered the recharge rate is different in different parts of the aquifer.

Mr. Wilkinson asked if Mr. Buhler's testimony as to available water is based on an average over the entire aquifer and it does not differentiate the north part from the south part?

Mr. Buhler said that is correct.

Mr. Wilkinson asked if it is true that one part will have a different recharge rate and it may not recharge as quickly as another portion?

Mr. Buhler answered that is correct.

Mr. Wilkinson asked how the chief engineer's recommendation takes that into consideration?

Mr. Buhler stated that the policy of the Water Management Board has always been to deal with aquifers on a regional basis.

On page 9, Table 9, Mr. Wilkinson asked what is the 10 on the bottom of the column for SP-79O

Mr. Buhler said that is the average water level change for the period of record for SP-79O.

Mr. Wilkinson asked if that tells anything about how quickly that area is recharging or not recharging?

Mr. Buhler answered that it could, but he does not believe that is the case with this observation well.

Mr. Wilkinson asked if that indicates to Mr. Buhler that there is the same degree of fluctuation in water tables as there are in other parts of the aquifer?

Mr. Buhler said the problem with SP-790 is that it is near the edge of the aquifer. There is only a few feet of saturated thickness on that observation well.

Mr. Wilkinson asked if Mr. Buhler can do an analysis based upon wells in a particular area and get a more regionalized analysis as to whether water is available so if you did the southern portion of the aquifer and you drew a line and analyzed the wells below that line can you come to a computation as to available water from that area in particular, assuming there is no connection between the two areas?

Mr. Buhler answered that he can't separate them because he knows that water is going to move from the north to the south and from the east to the west. There are management units within different aquifers where they have been separated out based on hydrologic conditions, the aquifer material thinning out, or on any other reason why we need to deal with one area separate from another area. Mr. Buhler said he has no rationale for doing that in this case. He said it can be done, but he would not do it.

Mr. Wilkinson asked if Mr. Buhler ever considered any of the applications that are before the board based on anything other than an average of the entire aquifer?

Mr. Buhler answered he reviewed the potentiometric maps comparing a dry year with a wet year. There were 34 individual points from the observation wells that Mr. Buhler said he can tell what the water level was in one year versus the water level of another year, but looking at Figure 8 on page 11, we can see that point in BD-77I, that would be the furthest one down, and we can look at the water levels September 1980 versus the water levels September 2011 and say the water levels are the same; the slope of the water table hasn't changed.

Mr. Wilkinson said Mr. Buhler testified that one of the particular test wells isn't that good in determining the characteristics because it is by the edge of the aquifer.

Mr. Buhler said that may influence it.

Mr. Wilkinson asked Mr. Buhler to tell him where Application Nos. 7365-3 – 7370-3 are located in relation to the aquifer map on Figure 8, page 11.

Mr. Buhler pointed out on a map the location of the applications with relation to the observation well and not in relation to the potentiometric surface. The green dots on the map with the green arrows show the new permit applications. The blue dots show the observation wells.

Mr. Wilkinson offered Peterson Exhibit 3, Ken Buhler's map of the locations of applications, the Tulare East James Aquifer and observation wells.

The exhibit was admitted into the record.

Mr. Wilkinson asked what the recharge rate is based upon the two monitoring wells in the southern portion of the aquifer.

Mr. Buhler said the annual rate of water level change for BD-77I from 1977 until August of 1995 when it became confined was .2 feet per year over that time period. Over the same time period the annual rate of water level change for SP-79O was .14 feet per year. For the seven observation wells that remain unconfined throughout the period of record over the same time period, the average annual rate of water level change was 0.087 feet per year.

Mr. Wilkinson asked if BD-77I is toward the Beadle/Spink county line and the applications are several miles south of that?

Mr. Buhler answered yes.

Mr. Wilkinson asked if the department has any monitoring wells that aren't depicted on Peterson Exhibit 2?

Mr. Buhler answered no.

Mr. Wilkinson asked if another irrigator in that vicinity of the six permit applications in 2012 all of a sudden experienced one of their wells that had been producing for years is no longer able to produce because the water level went down, what does that mean?

Mr. Buhler said it could be a well problem, a well interference issue, or drawdown from a well in the area.

Mr. Wilkinson said assuming it isn't a mechanical issue or a malfunction of the well itself, if the recharge rate into that well head is inadequate to irrigate with, why would that occur?

Mr. Buhler said there could be a well interference issue or drawdown from another well.

Mr. Wilkinson said if there is already an impact from drawdown if six more wells are placed in the area does that run the risk of increasing that problem?

Mr. Buhler answered that it does.

Mr. Wilkinson asked if all of these applications are approved, how does the department deal with an irrigator that has priority by application?

Mr. Buhler said if there is an adverse impact the chief engineer can order the junior appropriator to limit his withdrawals so that the senior appropriator has his water. Mr. Buhler explained the process.

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Mr. Wilkinson said, regarding the best information available, if the department is using some data from seven wells. He asked if the department is able to use the other monitoring wells in the vicinity to get a more accurate representation as to the recharge for a specific location rather than averaging.

Mr. Buhler answered yes.

Mr. Wilkinson said Mr. Buhler testified that the department policy is to do it over the entire aquifer.

Mr. Buhler said that is correct.

Mr. Wilkinson asked how long it would take to do it on a more site specific basis or region specific basis rather than doing an average over the entire aquifer?

Mr. Buhler said he has no basis for separating the regions. It may take three weeks to do it, but there is no basis for separating this out and having individual management units within the aquifer.

Mr. Wilkinson asked if Mr. Buhler anticipates continuing dry years will have an effect on the aquifer?

Mr. Buhler answered that water levels fluctuate with climatic conditions, but we are only using .98 percent, less than one percent, of the recoverable water in storage. One analogy would be like having a bank account with \$100 in it and you get take a dollar out every year because you put a dollar in every year. If you forget to put a dollar in one year and you still took a dollar out, is that significant?

Mr. Wilkinson asked if Mr. Buhler is comfortable if all of these applications are issued that regardless of what happens in the climate the next two or three years that the existing irrigators are not going to be negatively impacted?

Mr. Buhler answered yes.

This concluded Mr. Wilkinson's questions of Mr. Buhler.

Mr. Rylance said he believes Mr. Buhler answered all the questions that would go along with approval of the applications of his clients. Mr. Rylance said regarding Application No. 7364-3, Wipf Acres, which in the southeast quarter of Section 7, there is an irrigator in the southwest quarter of Section 17, Lonny Wipf, and he is the owner/operator of that permit according to the records. There is a letter from Allen Wipf who is not an owner or operator and he referred to that southwest quarter of Section 17. His letter seemed to indicate that he was opposed. Mr. Rylance said in the southeast quarter of Section 17, there was a permit initially owned by Allen Wipf that was transferred to Glendale Colony who transferred it to Comrose Colony and on May 5, 2012, they moved that 12 miles north. He asked if removal of the Comrose permit from this area would lessen any impact on the Lonny Wipf quarter?

Mr. Buhler said it would.

Mr. Vogel said Mr. Wilkinson asked Mr. Buhler questions about sectioning off the aquifer and doing tests. Mr. Vogel asked if the northern portion is dependent upon what is happening in the southern portion of the aquifer?

Mr. Buhler said it will adjust itself to an extent.

Mr. Vogel asked if we were to just section this off and take data from a portion of the aquifer rather than the entire aquifer, are we getting accurate data?

Mr. Buhler answered the data would not be accurate.

Responding to questions from Mr. Vogel, Mr. Buhler said there is a test well, BD-77I, and that isn't included in the chart on page 9 of his report and the reason is that the well is now a confined well. When the well was unconfined the well was recharging at an average annual rate more than the seven wells that are shown on Table 1, page 9. There is adequate unappropriated water to approve these six permits applied for by Huron Hutterian Brethren.

Ms. Best offered DENR Exhibit 17, a hydrograph for Observation Well BD-77I. The exhibit was admitted into the record.

Responding to questions from Ms. Best, Mr. Buhler stated he earlier testified that Observation Well No. BD-77I was unconfined and then went to confined. Mr. Buhler said the hydrograph in Exhibit 17 has a red line on it, and the one in his report does not. That line is 30.7 feet below the top of the casing. The reason that line is 30.7 feet below the top of the casing is because the top of the sand is 28 feet below ground surface and the casing is 2.7 feet above the casing, so at the red line on Exhibit 17 is where the aquifer went artesian. It was full. The date of this water level reading is August 14, 1995. To look at the southern part of the aquifer, the department looked at 1979 to where it went confined and over this time period, that average water level change was a positive .2 of a foot per year. The seven observation wells that the department used to calculate the amount of recharge exceeded withdrawals at over that same time period; 1979 to 1995. The average for SP-77J was .09 feet per year, SP-77P was .13 feet per year, SP-79G was .21 feet per year, SP-79H was .1 feet per year, SP-79K was .15 feet per year, SP-79O was .14 feet per year, and SP-80K was -.21 feet per year. The average of BD-77I was .2 of a foot per year. This shows recharge has exceeded withdrawals more in this area compared with the aquifer. By having seven wells over 31 years, there are 217 well points. Sixteen years is a reliable period of analyses to look at. BD-77I is located approximately two miles from the Huron Hutterian Brethren applications. The six Huron Hutterian Brethren applications are located approximately three miles from the nearest permit (No. 2367-3). There are sufficient observation wells in the southern part of the Tulare East James aquifer to make an analysis as to whether there is water available for the Huron colony applications or whether the recharge will be exceeded if they are granted.

Mr. Hoyt asked in the event of interference what protection is afforded and when would a well be protected as it relates to the intake in the aquifer? He asked Mr. Buhler to describe the protections for an adequate well and what an adequate well is.

Mr. Buhler answered that an adequate well is defined by well construction standard, 74:02:04:20(6) and it is a well that you can lower the pump 20 feet below the top of the aquifer or to the bottom of the aquifer if the aquifer is less than 20 feet thick. The definition of an adversely impacted domestic well, 74:02:04:20(7), states that if you have a well that was an adequate well at the time of construction and you have lowered your pump 20 feet below the top of the aquifer or to the bottom of the aquifer and there is no longer sufficient water available for your needs you've been adversely impacted. In the event of an adversely impacted domestic well it would have to be determined that it was not a well problem and that it was an interference problem. Following that investigation, staff would contact the user that was causing that impact and order them to reduce their withdrawals so there is not an adverse impact. Under certain circumstances if the intake for the well is not 20 feet into the aquifer then the person who claims interference may be required first to lower his intake point in the aquifer to 20 feet or more.

Mr. Hoyt said in the petition to intervene and in opposition, page 1 of that petition at the conclusion of the first paragraph, indicates in part that the department or the board should have taken into consideration these previously filed applications: 6344-3, 6345-3, 6346-3, and 6347-3. He asked what the status of those applications is. Mr. Hoyt asked if there were any applications for water permits which were active and filed prior to Application No. 7295-3, 7316-3, and the other applications presently under consideration?

Mr. Buhler said there are no applications on file. Everything has been either approved, denied, or withdrawn.

Ms. Best stated that Ken Buhler has testified regarding availability of water, lack of likelihood of impairment of existing rights, and recharge status. There are two elements in water permit applications; whether the application if granted would be in the public interest and whether the water use would be beneficial use in both the eyes of the appropriator and in terms of the public. Ms. Best said the Water Management Board has on a number of applications including applications pertaining to this aquifer found that irrigation use increases crop yield, that irrigation use is in the public interest, that it is a beneficial use to the appropriator, and that it is a beneficial use from the public perspective as well. She said the department would stipulate that the water use is in the public interest and a beneficial use for each of these applications.

Mr. Rylance, Mr. Wilkinson, and Mr. Vogel agreed to the stipulation.

Mr. Hallem said for the purposes of this proceeding based upon that stipulation, public interest and beneficial use are not contested and any ultimate findings would be based upon this stipulation.

Mr. Comes asked since No. 7348-3, Michael Sentell, is not for irrigation but for a gravel pit, would this stipulation apply?

Mike Sentell was administered the oath and testified that the water in the gravel pit will be used as the water source for irrigation. It was for irrigation from the start. Where the application changed is Mr. Sentell applied for surface water, a pond, to irrigate, and the state said that it is in the aquifer so it has now changed to be in the aquifer.

Mr. Hallem asked if Mr. Sentell is represented by counsel today?

Mr. Rylance indicated that he represents Mr. Sentell and the stipulation is acceptable to Mr. Sentell.

Mr. Comes said the hearing would proceed with the stipulation being accepted by the board.

Mr. Rylance and Mr. Vogel had no witnesses.

Mr. Wilkinson called Lenny Peterson.

Mr. Peterson was administered the oath and testified that his family is involved with Peterson Farms, Oscar, Inc. and some other operating entities. Mr. Peterson's family has been active irrigators for decades. Mr. Peterson said he is not here to argue against irrigation or the beneficial use of irrigation. His concern is based upon the fact that he experienced in 2012 some well problems in two irrigation pumps in the southern end of this particular aquifer. The permit is in Section 2 in Pleasant View Township in Beadle County in the southern portion of the aquifer. There are two wells at this location and one began pumping air in July or August. This well is located approximately three miles from Application Nos. 7365-3 through 7370-3. Mr. Peterson pointed out on the map the location of his wells. Mr. Peterson said his concern is that if more irrigation goes into that area there may not be enough water for irrigation of his land. His well was permitted in the 1970s so he would have the priority date and the new wells would have to be shut down if there is a problem.

Ms. Best asked if Mr. Peterson filed a complaint with the department?

Mr. Peterson said this happened at the end of the 2012 irrigation season.

Ms. Best said Mr. Peterson is referencing Water Right No. 2367-3. She asked what the saturated thickness of the aquifer is at the location of his wells.

Mr. Peterson said when he bought the property, the wells were already there.

Ms. Best asked how old the wells are.

Mr. Peterson said they were constructed in the 1970s.

Ms. Best asked if they are artesian wells?

Mr. Peterson stated that going by the test well, it is real close to the one he is using.

Ms. Best asked if Mr. Peterson has had a driller or anyone else pull the casing on the well?

Mr. Peterson said he is waiting to get that done.

Responding to a question from Mr. Rylance, Mr. Peterson stated that he is only contesting the permit applications in the southern area of the aquifer, filed by Huron Hutterian Brethren.

Responding to questions from Mr. Vogel, Mr. Peterson said he is not sure what year the well was put in, but he knows it was in the 1970s, and he has had no work done on the well since he has owned the property.

Mr. Hoyt said it appears that Mr. Peterson's principal concern with the applications is well interference. He asked Mr. Peterson if during all his years of irrigating he has ever filed a complaint with the department about interference?

Mr. Peterson said he has never filed a complaint with the department.

Responding to a question from Mr. Wilkinson, Mr. Buhler stated that the depth of BD-77I is 70 feet, the aquifer material is from 28 to 58, 30 feet of saturated material and shale at 58.

Responding to questions from Ms. Best, Mr. Buhler stated that the permit number for the Peterson well that is located close to the intersection of Highway 28 and Highway 37 is No. 2367-3. It is an irrigation well. There is no well log on file for that well, but looking at the test hole information in the area and the geology, it appears there is 25 feet of saturated thickness at that location. The aquifer is under artesian pressure at the location of 2367-3.

Ms. Best asked what the information about saturated thickness and confined conditions tell us about whether availability?

Mr. Buhler said he believes it tells us that there is plenty of saturated thickness. This isn't a real thin part of the aquifer, there is probably about seven feet of artesian pressure here.

Ms. Best asked if Mr. Buhler has an opinion as to whether the proposed colony permits would be likely to impair Water Right No. 2367-3?

Mr. Buhler said he does not believe these permits would impair No. 2367-3 because of the distance, three miles, drawdown simply is not that much. At a mile there is less than 10 feet of drawdown and at three miles it is a lot less than that. The most important thing to look at is that the six permits that the colony has applied for are right next to each other so it's pretty self-limiting; they are going to hurt themselves worse than they are going to hurt anybody else.

Ms. Best said there are other proposed permits in the aquifer and the closest one is to the north is 7348-3. She asked whether Mr. Buhler believes development of that proposed well would impair the well previously discussed.

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Mr. Buhler said the department has never seen an impairment issue from the aquifer; it is not going to happen.

Mr. Wilkinson if it does happen, how is it determined who gets shut down?

Mr. Buhler said if it is a well interference issue the interfering well will be shut down if it is a junior water right. The interfering well would be the well in closest proximity.

The parties provided closing arguments.

Vice Chairman Comes requested board action.

Motion by Hoyt, seconded by Holzbauer, to approve Water Permit Application Nos. 7316-3, Van Buskirk Farms LLP, 7348-3, Michael Sentell, 7364-3, Wipf Acres LP, and 7365-3, 7366-3, 7367-3, 7368-3, 7369-3, and 7370-3, Huron Hutterian Brethren; subject to the qualifications set forth by the chief engineer. Motion carried.

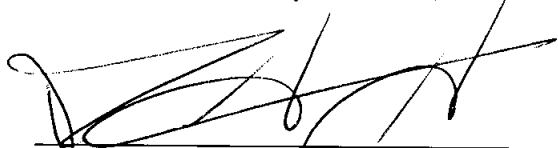
The parties waived findings.


ADJOURN: Vice Chairman Comes declared the meeting adjourned.

A court reporter was present for the meeting and a transcript may be obtained by contacting Carla Bachand, Capital Reporting Services, PO Box 903, Pierre, SD 57501, telephone number 605-224-7611.

The meeting was also digitally recorded and a copy of the recording may be obtained by contacting the Department of Environment and Natural Resources, 523 East Capitol Avenue, Pierre, SD 57501; telephone number 605-773-3886. The recording is also available on the DENR website at <http://denr.sd.gov/boards/schedule.aspx>

Approved this 6th day of March, 2013.



Chairman, Water Management Board

Secretary, Water Management Board

WATER MANAGEMENT BOARD MEETING

December 6, 2012



Unopposed New Water Permit Applications Issued Based on the Chief Engineer Recommendations

		Newell	BU	102 AF	fwp, livestock	runoff	
1930-1	Harold Miller	Lakewood	LA	0.44 cfs	85.22 acres	1 well-Madison Aquifer	If, 1 special
1931-1	Elkhorn Ridge	Merriman	TD	2.28 cfs	160 acres	2 wells-Ogallala Aquifer	wi, wcr, iq, 1 special
2559A-2	John Markus	Cody NE	BT	4.0 cfs	280 acres	2 wells-Arikaree Aquifer	wi, wcr, iq
2688-2	Dennis Bakley	Raymond	CK	0.78 cfs	120 acres	1 well-Altamont Aquifer	wi, iq, 4 special
6761A-3	Chad Fritz	Watertown	RB	2.22 cfs	130 acres	2 wells-Coteau Lakes Aquifer	wi, wcr, iq, 2 special
6835A-3	Blooming Valley Grain Farm	Sioux Falls	TU	0.26 cfs	no add'l	1 well-Upper Vermillion:Missouri	wi, wcr, iq
6853A-3	Pine Knoll Inc.	Hitchcock	SP	no add'l	45 acres	1 well-Tulare:Western Spink	wi, wcr, 1 special
7126A-3	Marshall Brothers	Toronto	DU	no add'l	RWS	connect Lincoln Pipestone RWS	none
7381-3	Brookings-Deuel RWS	Centerville	CL	0.56 cfs	25 acres	1 well-Lower Vermillion:Missouri	wi, wcr, iq, 1 special
7383-3	Roger A Hanson	Centerville	CL	1.67 cfs	80 acres	1 well-Upper Vermillion:Missouri	wi, wcr, iq, 1 special
7384-3	Roger A Hanson	Wagner	CM	3.33 cfs	166 acres	1 well-Choteau:West	wi, wcr, iq
7385-3	Sam Fousek	Zell	HD	0.067 cfs	geothermal	1 well-Dakota Aquifer	wi
7387-3	Tom Nuhsbaumer	Wakonda	UN	2.0 cfs	300 acres	1 well-Missouri:Elk Point	wi wcr, 1 special
7388-3	Clay RWS, Inc.	Vermillion	CL	3.11 cfs	328 acres	2 wells-Missouri:Elk Point	wi, wcr, iq
7389-3	Wade A Larson	Hitchcock	SP	1.94 cfs	135 acres	1 spring-Tulare:Western Spink	iq, 3 special
7391-3	Peterson Farms	Lake Benton	BG	2.67 cfs	RWS	2 wells-Big Sioux:Aurora	wi, wcr, 2 special
7392-3	Lincoln Pipestone RW	Lake Benton MN	BG	614 AF	RWS	future use-Big Sioux:Aurora	3 special
7393-3	Lincoln Pipestone RW	Big Stone City	RB	3.33 cfs	235 acres	1 well-Veblen Aquifer	wi, wcr, iq
7394-3	Rodney Fenhaus	Huron	BD	1.78 cfs	264 acres	James River	iq, 2 special
7395-3	Huron Hutterian Brethren	Pierre	SU	0.27 cfs	6 acres	1 well-Gray Goose Aquifer	wi, iq
7396-3	Oahe Speedway LLC	Yankton	YA	1.56 cfs	249 acres	1 well-Lower James:Missouri	wi, wcr, iq
7397-3	Frank T Kralicek	Yankton	YA	1.56 cfs	114 acres	1 well-Lower James:Missouri	wi, wcr, iq
7398-3	Frank T Kralicek	Elk Point	UN	2.67 cfs	280 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7399-3	Pat Walsh	Yale	BD	1.33 cfs	188 acres	1 well-Floyd East:James	wi, wcr, iq
7400-3	Jack Wellnitz	Springfield	BH	2.0 cfs	200 acres	1 well-Choteau West	wi, wcr, iq
7401-3	Leon Vanderlei	Springfield	BH	2.0 cfs	270 acres	1 well-Choteau West	wi, wcr, iq
7402-3	Craig Vanderlei	Springfield	BH	0.075 cfs	livestock	1 well-Choteau West	wi, wcr
7403-3	Craig Vanderlei	Springfield	BH	no add'l	160 acres	1 well-Big Sioux:North	wi, iq
7404-3	Zirbel Dairy	Ortley	GT	3.33 cfs	280 acres	3 wells-Big Sioux:North	wi, wcr, iq
7405-3	Zirbel Dairy	Ortley	GT	1.89 cfs	140 acres	1 well-Vermillion E Fork:Willow Lk	wi, wcr, iq
7406-3	Jack Schmidt	Willow Lake	CK	2.22 cfs	104 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7407-3	Pat Walsh	Elk Point	UN	32 AF	141 acres	Choteau Creek	iq, lf, 2 special
7408-3	Roger Baumfalk	Avon	BH	1.11 cfs	40 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7409-3	Virgil & Marcia Mollet	Jefferson	UN				

7410-3	Eugene Mollet	Jefferson	UN	1.33 cfs	67 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7413-3	Roger Volzke	Java	CA	3.33 cfs	240 acres	1 well-Grand Aquifer	wi, wcr, iq
7414-3	Calvin Hanson	Meckling	CL	1.78 cfs	169 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7415-3	Bakker Crossing Golf Course	Sioux Falls	LN	0.89 cfs	34 acres	2 wells-Sioux Quartzite	wi, wcr, iq, 2 special
7416-3	John G Yaggie	Mission Hill	YA	1.11 cfs	36 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7417-3	John G Yaggie	Mission Hill	YA	no add'l	13 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7418-3	Brook Bye	Vermillion	CL	1.78 cfs	134 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7419-3	James R Orris	Clark	CK	6.44 cfs	520 acres	4 wells-Altamont Aquifer	wi, wcr, iq
7420-3	Rick Even	Elkton	BG	2.22 cfs	240 acres	1 well-Rutland Aquifer	wi, wcr, iq
7421-3	Valley View Farms Inc.	Watertown	CD	2.0 cfs	156 acres	1 well-Big Sioux:North	wi, wcr, iq
7422-3	Rex Bye	Gayville	YA	1.78 cfs	125 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7423-3	Michael Bottolfson	Vermillion	CL	2.22 cfs	135 acres	1 well-Missouri:Elk Point	wi, wcr, iq, 1 special
7424-3	Spink Hutterian Brethren	Frankfort	SP	3.84 cfs	270 acres	James River	iq, 1 special
7425-3	Spink Hutterian Brethren	Frankfort	SP	6.67 cfs	408 acres	James River	iq, 1 special
7426-3	Spink Hutterian Brethren	Frankfort	SP	2.63 cfs	185 acres	James River	iq, 1 special
7427-3	Spink Hutterian Brethren	Frankfort	SP	8.18 cfs	575 acres	James River	iq, 1 special
7428-3	Paul Leiseth	Hazel	CD	3.33 cfs	240 acres	2 wells-Big Sioux:North	wi, wcr, iq
7429-3	Sorenson Family Farm LLC	Vermillion	CL	1.78 cfs	40.66 acres	Missouri River	iq, 1 special
7430-3	Michael G Williams	Sioux Falls	MA	1.11 cfs	86 acres	1 well-Big Sioux:Sioux Falls	wcr, iq, 2 special
7431-3	Michael G Williams	Sioux Falls	MA	1.11 cfs	90 acres	1 well-Big Sioux:Sioux Falls	wcr, iq, 2 special
7432-3	HCM Schaffer Inc.	Mound City	CA	3.56 cfs	320 acres	1 well-Grand Aquifer	wi, wcr, iq
7433-3	Poinsett Hutterian Brethren	Estelline	HM	1.78 cfs	130 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7434-3	Poinsett Hutterian Brethren	Estelline	HM	3.56 cfs	520 acres	1 well-Big Sioux:Brookings	wi, wcr, iq
7435-3	Poinsett Hutterian Brethren	Estelline	DU	1.78 cfs	97.5 acres	1 well-Big Sioux:Brookings	wi, wcr, iq, 1 special
7436-3	Larry Skorepa	Utica	YA	2.0 cfs	185 acres	1 well-Lower James Miss:Scotland	wi, wcr, iq
7437-3	Glenn Nelson	Meckling	CL	1.78 cfs	160 acres	1 well-Missouri:Elk Point	wi, wcr, iq
7438-3	James J Davis	Parker	TU	1.56 cfs	160 acres	1 well-Vermillion:West Fork	wi, wcr, iq

ATTENDANCE SHEET
WATER MANAGEMENT BOARD
Date December 6, 2012

<u>NAME (PLEASE PRINT)</u>	<u>MAILING ADDRESS</u>	<u>CITY, STATE & ZIP</u>	<u>ITEM OF INTEREST</u>
Kevin Dettler	515 OAK ST	Frankfort, SD 57440	IR 7295-3
Jim Hunsstad	13755 395th Ave	Bath SD 57427	Oversight
Ray KECANCE	Box 207	WTN SD 57201	TULARE
Tracy	870 Beach Ave	Aurora, SD 57350	7373-3
Melvin G. Hick	" "	" "	7373-3
MATT Hicks	Foss Bldg, Pierre	DENR	
Tom Hawser	648 18th St Huron	Huron	leg. Oversight
JEDREY BAUMANN	1223 SAGE BARN ROAD PO BOX 910	FORT PIERRE, SD 57532	Phon Creek canal
William J. Van	37644 184th St	Tulare SD	7295-3 Water permit
Wendy	P.O. Box 29	DeSmet	Tulare
Garry Peterson	1911 Maple Ave	Hitchcock	SD/Tulare
Rosal Dettler	209 2nd St NW Huron	Huron SD	Tulare
Michael Sentell	18690 398th Ave.	Hitchcock SD.	7348-3 water permit
Matthew vanBuskirk	Box 72	Hitchcock SD	7316-3 water permit
Peter van Buskirk	Box 24	Hitchcock SD	7316-3 water permit

ATTENDANCE SHEET

WATER MANAGEMENT BOARD

Date December 6, 2012

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